BELOW THE SURFACE

Anishinabek Mining Strategy

Our community engagement process and recommendations to modernize the Ontario Mining Act

January 15, 2009

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Dear Chiefs, Councils and Citizens:

I am pleased to submit to you, **"BELOW THE SURFACE" – The Anishinabek Mining Strategy Final Report.** This is the result of the First Nations of the Anishinabek Nation taking the duty to consult into our own hands and engaging its leadership and citizens in process to seek their views on the proposed modernization of the Ontario Mining Act.

This report is the result of an important series of decisions taken by your leaders to respond to the Government of Ontario's failure to meet their duty to consult as it moved through its process to modernize the Ontario Mining Act. Despite the Crown's failure to meet their duty to consult with us, the issue of mining and development in our traditional territory is too important for the future of our First Nations. It is for these reasons your leadership decided to seize the initiative and undertake our own engagement process.

As reported at our Special Chiefs Assembly in London in November 2008, we came to an agreement with the Minister of Aboriginal Affairs and the Minister of Northern Development and Mines to extend the consultation period on the modernization of the Mining Act from November, 2008 until January 15, 2009. The agreement also ensured that the Anishinabek Nation would directly participate in the drafting process of the bill which will be considered by the Ontario Legislature. This represents and unprecedented opportunity to make direct changes to legislation.

A team was put together consisting of facilitators, legal counsel, policy advisors and our own experts in mining. They alongside Anishinabek Nation leadership and staff held 10 regional engagement sessions and one condensed presentation throughout the territory beginning December 1, 2008 until January 8, 2009.

The feedback received was compiled into this final report that has been delivered to the Anishinabek Nation Chiefs. The Premier, Minister of Northern Development and Mines, and all members of the Ontario Legislature will also receive copies. We intend that this report will provide guidance to the UOI negotiating team at technical meetings with the government of Ontario as it drafts the legislation and then direction for future UOI engagement in the legislative process.

This is only the first step in the process to amend the Mining Act. We will continue to work towards ensuring that the government fulfills its duty to consult and that First Nations have adequate time and capacity to engage effectively. We will keep you informed.

I would like to thank our elders, citizens, community leaders, technicians, and staff that participated and imparted their knowledge and wisdom during the community engagement sessions.

In Nationhood,

John Beaucage
Grand Council Chief
Anishinabek Nation

The Anishinabek Nation - Union of Ontario Indians

The Anishinabek Nation incorporated the Union of Ontario Indians (UOI) as its secretariat in 1949. The UOI is a political advocate for 42 member First Nations across Ontario. The Union of Ontario Indians is the oldest political organization in Ontario and can trace its roots back to the Confederacy of Three Fires, which existed long before European contact.

Introduction

Clearly First Nations and industry are far apart in terms of stewardship ideology (traditional knowledge vs. controlled development). As two socio-economic worlds collide industry and government gradually realized that First Nations are entrenched firmly on lands chosen for mineral extraction, and that meaningful consultation and accommodation will need to become protocol.

Formerly the First Nations were pushed aside to allow for resource development. By occupying these lands in conjunction with recent case law recognizing Aboriginal and Treaty Rights First Nations in Ontario now must be included in the decision-making processes. The catalyst to move this forward has been recent case law developments, with the most recent being the Kitchenuhmaykoosib Inninuwug First Nation (KI) incident in Ontario's Far North.

The resulting historical moment in modernizing the Mining Act can be fruitful to both industry and First Nations. It can be a huge step forward in meaningful involvement for Anishinabek Nation and deliver certainty to the industry – if done properly.

Goal

The goal for Anishinabek community engagement was simple – educate, inform and support the Anishinabek Nation citizens on the Ontario Mining Act and important issues then obtain direction to guide Anishinabek Nation's in its role in participating in the drafting of the legislation. The wisdom and direction will also guide its actions as the new Mining Act makes its way through legislative processes.

Process

Since 2005, the Anishinabek Nation has been working with communities on developing a successful consultation process resulting in the Anishinabek Nation Consultation Framework. This framework has formed the basis of the community engagement process on the Modernization of the Ontario Mining Act.

The first step in this process was to establish a working group, consisting of UOI leadership, staff and portfolio representatives, legal counsel, an independent expert, a facilitation team and representatives of the Ministry of Northern Development and Mines. The Working Group was created and organized its first meeting to draft a terms of reference and develop an engagement strategy on November 18, 2008. It selected the members of the Engagement Team, finalized the engagement schedule and guided the development of the presentation materials. The composition of the Engagement Team was chosen to ensure that any host of questions could be answered and the right information could be gathered. The Working Group approved the interim and final consultation report and liaised with the First Nations' leadership. The final role of the Working Group will be to advise the negotiating team that will participate in the drafting of legislation and policy.

The Working Group consisted of the following people:

- Bob Goulais - Chief of Staff & Executive Assistant to the Grand Council Chief, UOI
- Jason Laronde - Director, Lands and Resources, UOI
- Monica Lister - Executive Liaison Office, UOI
- David Laronde - Mining Expert

- Sonya Pitawanakwat - Legal Counsel, UOI
- Mining Act Policy Analyst – Dean Assinewe, Mineral Development Coordinator, Sagamok First Nation
- Ron Ross - Pathway Group (facilitation lead)
- Wayne Lord - Pathway Group (facilitation lead)
- Pierre Lefebvre - Senior Aboriginal Relations Officer, Ministry of Northern Development and Mines

Marketing and advertising was used to promote the sessions. Although due to the short timelines imposed by the Provincial process the invitation materials were made available to the communities shortly before the sessions would begin.

Engagement Session Content

Each engagement sessions included focused presentations on key issues by our team of experts followed by a facilitated discussion that further explored issues and sought the views of participants. The goal was to gather in the room a team that could answer any questions from the participants, then through a facilitated process obtain direction to guide the UOI's leadership as it negotiates and advocates on behalf of the Anishinabek Nation with the Government of Ontario.

It is essential that our rights be recognized and protected. Legal considerations are especially important in this process. Our UOI Legal Counsel constructed a legal opinion on the specific proposed initiative and provided an overview on relevant case law during the sessions.

As with most initiatives of this nature funding was received by the Province to advance this engagement.

Engagement Session Location and Participation

Engagement sessions were be planned and held through the territory. Economies of scale, funding and short timeframe dictated holding regional community-based model, where regional sessions would be held.

The following sessions were held between November 18, 2008 through January 12, 2009.

Date	Meeting	Location	Region
Tuesday, November 18, 2008	First Working Group meeting	Toronto	N/A
Tuesday, December 2, 2008	Garden River First Nation	Sault S. Marie	Robinson Huron
Wednesday, December 3, 2008	Sagamok First Nation	Massey	
Wednesday, December 3	Serpent River (Evening Presentation)	Cutler	
Thursday, December 4, 2008	M'Chigeeng First Nation	Manitoulin Island	
Friday, December 5, 2008	Whitefish Lake First Nation	Sudbury	
Monday, December 8, 2008	Curve Lake First Nation	Peterborough	Southeast
Tuesday, December 9, 2008	Chief Caucus Report to the Chiefs	Ottawa	N/A
Friday, December 12, 2008	Mnjikaning First Nation	Orillia	Southeast
Monday, December 15, 2008	Aamjiwnaang First Nation	Sarnia	Southwest
Tuesday, January 6, 2009	Fort William First Nation	Thunder Bay	Robinson Superior
Wednesday, January 7, 2009	Lake Helen First Nation	Nipigon	
Thursday, January 8, 2009	Pic River First Nation	Marathon	

Below the Surface Community Participation	
SOUTHEAST REGION:	Alderville First Nation
	Beausoleil First Nation
	Curve Lake First Nation
SOUTHWEST REGION:	Aamjiwnaang First Nation
	Chippewas of Kettle & Stony Point
LAKE HURON REGION:	Ojibways of Garden River
	Magnetawan First Nation
	Serpent River First Nation
	Sheshegwaning First Nation
	Sagamok Anishnawbek
	Thessalon First Nation
	Wahnapitae First Nation
	M'Chigeeng First Nation
	Whitefish Lake First Nation
	Whitefish River First Nation
	Wikwemikong Unceded Indian Reserve
NORTHERN SUPERIOR REGION:	Fort William First Nation
	Red Rock Indian Band (Lake Helen)
	Long Lake #58 First Nation
	Namaygoosisagagun First Nation
	Ojibways of Pic River
	Pic Mobert First Nation
***Independent First Nations**	Whitesand First Nation
	Missanabie Cree First Nation
	Rainy River First Nation

*not affiliated with UOI

Executive Summary

Overall Reaction to the Process

At each session our participating Anishinabek citizens quickly realized that the Modernization of the Mining Act had broader implications and would have a tremendous impact on many other important issues. An issue such as revenue sharing under the new Mining Act would set precedence for the manner in which the Province would discharge its duty to consult and accommodate First Nations' rights. This could be the opportunity to establish the model used to rewrite many other provincial acts that do not now meet this duty. The Province also has the added pressure of fulfilling recommendations of its Ipperwash Report. One Anishinabek citizen succinctly expressed the group's sentiment in the comment left on the meeting evaluation form indicating that there was, "too short of time for so much information to be absorbed. There should be a longer period to respond to something as big as this - our future is at stake!"

Although the participants expressed that the information and process used by UOI to engage the citizens of the Anishinabek Nation was useful to their individual communities they expressed frustrations that the amount of time allocated by the Ontario Government to engage in this process was totally inadequate. In fact, over 91 per cent indicated that in the meeting evaluation form. The participating members also expressed the need to have more Anishinabek participate in such an important debate. Some signaled the fact that they only heard of the session the day before. Again, this was due to the short time that was given by the Province for the Anishinabek Nation to consult its own people.

It was acknowledged that the process and presentations were all of high quality but they still had issues over the quality of the engagement. This is not surprising since there was so little time allotted for this process. Overall most thought the information and process outlined during the session was useful to them and their communities with over 93 per cent stating the exercise was helpful or very useful.

That being said we had representatives from 21 UOI First Nations participate in the sessions. As part of UOI's open and transparent process we also had three Independent First Nations take part as well. The Minster of Northern Development and Mines, Michael Gravelle joined the group at the Red Rock Indian Band and we had a grade six class join us in Sagamok. Our process garnered interest from Lakehead University with three people joining us at two different locations.

Facilitated Discussions

After reviewing the Mining Act, relevant case law and reviewing a First Nation's experience in dealing with mining in its territory, the discussion was guided by a facilitation process which focused on the areas of concerns and decision points that are relevant to First Nations as it relates to the Mining Act.

Although guided, each session seem to gravitate to nine general areas of discussion. Participants confirmed that what was most important to the Nation was the protection of the environment, and their Aboriginal and treaty rights. The discussion of rights was often followed by a lively discussion of the Crown's duty to consult and accommodate and how capacity needs to play an important role in satisfying that duty. Land use planning and withdrawals of culturally significant sites was a natural extension of these concepts.

Even after hearing how recent court cases strengthen First Nations long held positions, a dispute resolution process was seen as needed to resolve issues before engaging the courts. The context of other Acts and linkages needed to be explored in order to have a more holistic approach to solving longstanding issues. The citizens also wanted to explore transitional processes where they could come back and review the legislation on a regular basis citing the fact that they had little time to fully assess how this would affect them. This concern was backed by the fact that the present Act is well over a century old.

What We Heard

Environment

One true sentiment and belief came through at each and every session - the critical importance of the protection of the environment. It came through every facet and medium of discussion, many different terms were used but always reflecting the same beliefs. Most opening prayers paid tribute to Mother Earth while other citizens spoke about environmental protection and stewardship. Still others spoke of their responsibility to protect the earth for many generations to ensure the Anishinabek culture and way of life is protected for generations to come. The health of Mother Earth is more important than money.

The choice to damage the earth, water or air is a very grave one and its protection is the Nation's solemn duty. To be clear, responsibility to protect Mother Earth belongs to the First Nations and it is one that is taken seriously.

Some described firsthand accounts of disastrous events in their own communities. Serpent River First Nation described the effects of uranium mining that caused cancer and environmental destruction. Pic River First Nation relayed their experiences of rivers being polluted by mining accidents.

For many First Nations this goes well beyond beliefs and values because they have lived through these issues first hand and understand full well what is at stake. The sentiment that environmental protection must form part of the Mining Act was obvious to the Nation that has at its core these values and beliefs backed by experience of hard lessons learned.

These incidents seem to point to the fact that current systems to protect the environment are not working and the responsibility to ensure the right things are done should rest with the First Nations.

Aboriginal and Treaty Rights

A unanimous consensus was voiced stating that Aboriginal and treaty rights need to be fully acknowledged, respected, protected and affirmed in the new Mining Act. Many suggested that this should flow from a government-to-government relationship perhaps expressed through a partnership or co-management process. The citizens were open to different approaches to achieve this. There was a sense that First Nation principles and values statements included in the Act would accomplish this.

Citizens articulated First Nations' principles and values that should be considered. Some of these concepts included a holistic multi-generational perspective that looks at protecting Mother Earth by considering the long-term and cumulative effects of projects on the earth, water and air. Spiritual declarations should also be considered. Participants echoed concepts like refusing non-renewable projects that threaten the ecology because some things are more important than short term money.

There was also some support to have definitive statements like non-derogation clauses and treaty enabling clauses to support the protection of rights.

Consultation and Accommodation

Although most citizens understood that the Supreme Court had moved to protect our rights by declaring the Crown's duty to consult and accommodate First Nations, having UOI legal division go through the relevant case law to outline what the courts decisions mean and how they could affect the modernization of the Mining Act in Ontario, was welcomed.

After better understanding the Crown's duty to consult and accommodate combined with their intrinsic knowledge of our inherent rights the definitive statement that appropriate and meaningful consultation and accommodation should occur at the very beginning of the mining sequence and at every stage of the mining sequence was unanimously articulated.

The duty to consult and accommodate was explored more deeply during the sessions. Many wanted to talk about what consent would be needed from First Nations for a project to move to the next stage. Ideas like the need to have a negotiated Impact Benefit Agreements (IBA) with the companies as a means of accommodating First Nations interests. IBAs should cover revenue sharing but also include many other tangibles like jobs and access to contracts. Although everyone conceded that this

was needed there were concerns about these agreements being made public. The fear was that government would use this information to reduce services or funding.

The groups also made it clear that Resource Revenue Sharing Agreements with the Province would also be needed to obtain consent.

Most held the belief that the inclusion of consultation and accommodation measures, if done properly, would do much correct the injustices imbedded in the present Act. It seemed clear to the groups that this was the proper and just mechanism but the conversations quickly turned to the need for capacity for First Nations to participate equally with these new partners.

Capacity

A number of deficiencies were identified when participants were asked what capacity issues they had in their communities. As a general rule capacity is a critical issue for most First Nations. When it comes to mining, the issue is having capacity to engage the government and the companies in consultations. The message heard was that First Nations simply do not have the staff nor the time and other resources to develop the expertise required. The need for core capacity to respond and negotiate with government and individuals is critical.

How can you consult equitably if on the one side you have government and industry at the table with a large, well financed team of experts and lawyers backed by full research and on the other side just the Chief and a few councilors. An experience was shared by a First Nation with limited capacity, where a 400 page technical mining closure plan was delivered to them and they had 45 day to respond (that is the only consultation requirement in the present Mining Act). This was the first they had heard of this new mine to be built on their traditional territory. They had to scurry to hire an expert to review it and incur the cost to do so.

There was the sense that for meaningful and appropriate consultation to occur there had to be a level playing field. If the duty to consult was that of the Province then they should assist in developing this capacity. The companies also have a supporting role to play, if they want to do business on First Nations' territory then the costs should be passed to them.

Citizens often expressed that they were always reacting to things and felt that they could never get ahead of the curve. In addition they seemed frustrated to hear the Premier's comments that in the Far North proper planning with First Nations needed to occur before resource development would move forward. The planning would also ensure that things that were important could be protected. Why could that not be afforded in the near north where most of the industry is focused? Although the Premier's announcement spoke to a 15 to 20 year time frame the discussions focused on what could be done now.

But they also expressed the need to do proper planning and research. Capacity to do proper land use planning was often identified.

Withdrawals of Culturally Significant Sites

The MNDM presentation outlined that the present Mining Act did have provisions to protect important areas but again only in the Far North. They acknowledged that many parts of this program are too restrictive and they are presently testing two pilot programs in the Province. Having heard more about the program the groups seem to want it not only included in the new Act but greatly expanded. This would provide the needed protection of these areas until the full land use planning could be done.

Dispute Resolution

Throughout the sessions many experiences and accounts of legal battles were discussed. Some won, some lost and even some that were not fought because the court system is too expensive or the adversary had deep pockets to drag on the fight. Although the recent case law has had some encouraging decisions the consensus was that there had to be another avenue to settle things before going to court.

Having an Act respect our Aboriginal and treaty rights would go a long way to minimizing conflicts but it would not eliminate them. The Act would need a hardy dispute resolution mechanism to deal with issue and conflicts. Many models were considered but the feeling was that a First Nations' model should be considered.

Linkages

Going through this process brought out many grievances towards the Ontario Government. Comments such as, "the right hand does not know what the left hand is doing," was expressed. Examples included tales of how different Ministries deal with the environment. Individual ministries are constantly coming to First Nations with similar requests for consultation.

Aggregate extraction and mining have widely different requirements when they both pull stuff out of the ground. Serious issues like the utter lack of coordination between the Federal government and the Province on potentially dangerous endeavors like uranium mining. Even the Ontario Government's messages seemed confused from the Ipperwash Report Implementation to specific claims and the Far North plan.

Although they seemed unrelated the underlying theme is more that consideration to how things link together should be attempted. The thought was that all issues may not be addressed with the modernization of one act but an attempt to consider the larger picture should be considered.

Transitional Processes

The excitement of having input in changing an inadequate piece of legislation that effectively ignored Aboriginal and treaty rights often turned to a sense of suspicion and apprehension. Was the Government serious about addressing their issues? Then, why the hurry? Is something being forgotten in the rush? Are they trying to pull one over on us?

The idea that we need to fix this thing if it's not right was expressed over and over. And it can't be every hundred years or by being forced to change by the courts. What is needed is a way to sit down and review what is working and what is not and a mechanism to make changes. This process needs to happen regularly.

Issues such as a staking rush when the new Act is implemented is a serious risk that needs to be mitigated.

Recommendations

Consultation on the new Mining Act

- In the spirit of reconciliation and to begin to rectify the inadequate consultation process undertaken by the Ministry of Northern Development and Mines, it is recommended that a full and comprehensive First Nations consultation process be initiated before the passing of the new Mining Act through a specific First Nations process after First Reading.

Environmental Protection of Water

- Water is the lifeblood of Mother Earth and the source of all life. As such, the protection of water is of paramount importance to First Nations. Exploration and mining activity must not affect the quality and quantity of water whatsoever.
- When evaluating mining proposals the following issues concerning water be considered and taken into account:
    - Adequate provisions must be made to protect all bodies of water potentially affected by mining activities in particular exploration and mining under lakes;
    - First Nations' interests in lake beds and off-shore interests have never been ceded. There is a likelihood of claims being submitted in future.

First Nations Involvement in Environmental Assessment

- First Nations must be involved in all aspects of the environmental assessment process respecting the approval of a mine, ongoing monitoring of the mine and mine closure planning and closure operations. The purpose is to prevent unintended consequences of mining on other aspects of the Environment.

First Nations Principles and Values Statements

- First Nations recommend the inclusion of either a First Nations-specific Preamble or a specific Article/Section entitled "First Nations Values" into the new Ontario Mining Act. This purpose of this statement is to promote the values and views of First Nations and to contemplate using these values as tests and indicators when reviewing mining applications.

Make direct reference in Mining Act to Aboriginal and Treaty Rights

- Within the First Nation values section, the new Ontario Mining Act will need to recognize and affirm the existing Aboriginal and Treaty Rights as defined in section 35(1) of the Canadian Constitution of 1982. In this Act, "Aboriginal peoples of Canada" includes the Indian, Inuit and Métis peoples of Canada. Treaty rights include rights that now exist by way of land claim agreements or may be so acquired.

Partnership/co-management

- Within the First Nations Values section, First Nations and MNDM will enter into partnerships/co-management agreements. These agreements shall consider utilizing First Nations location and skills for activities such as monitoring and compliance.

- First Nations' experts will be called upon to work with provincial staff in providing environmental assessments and impact statements of mining activities.

- Should the government of Ontario propose amendments to this Act, the Premier of Ontario or his delegate invite representatives of First Nations peoples of Ontario to be meaningfully consulted and to participate in discussions on that item.

Environment

- Within the First Nations Values section, First Nations traditional role as stewards of the land be recognized and supported in this Act as well as First Nations overarching goal to ensure the protection of Mother Earth for seven generations and beyond, and ensuring the protection of the land in its natural state.

Sustainability and Stewardship

- Within the First Nations Values section, the Act shall require the development of a set of indicators that measure the effectiveness of sustainability and stewardship. The test would determine whether the mine contributes to the First Nation goals and aspirations (e.g. increase enrolment and completion of post secondary schools, decrease in dependency of social assistance)

- Indigenous Traditional Knowledge (ITK) studies should be integrated into all workplans, mine planning, construction and closure plans.

Amend Section 2 of the Mining Act

- We recommend adding sections and language to section 2 "Purpose" of the Mining Act to reflect the Crown's duty in its dealing with First Nations.

- Append to section 2 the text "and to ensure that any prospecting, exploration, or mining activity is conducted in a manner consistent with protecting the inherent rights of First Nations."

- Add section 2.1 and include the following text, "All persons exercising functions and powers under this Act shall act in a manner consistent with the Crown's legal obligations to First Nations."

Adopt Integrated Consultation Processes

- It is recommended that appropriate consultation with First Nations should occur at every stage of the mining sequence. The level of consultation will need to correspond to the level of impact on that First Nation.

- Specifically the issues surrounding the Free Entry System need to be addressed. A hybrid consultation (two stage staking) approach should be incorporated at the beginning of the mining sequence. It would include both map staking and the traditional staking system. This would entail having a proponent (company/prospector) first use map staking to secure the area then have a period of time where they approach the affected First Nation(s) to discuss their plans to enter the traditional territory.

Full and Bona fide Consultation

- Full and bona fide consultation means:
- acknowledged and informed notification;
- a jointly developed community engagement strategy;
- funding and resources to adequately conduct and ensure participation in the engagement strategy;
- sufficient time to fully conduct the consultation process.

Improved Notification

- The notification process must be improved by ensuring both the Province of Ontario, prospectors and mining companies know who to notify and to ensure the applications are understood through capacity support and developing a Global Information System program in First Nations.

- Improvement of the ability of the First Nations to respond appropriately to that notification is also needed.

Consent

- First Nations reserve the right reject to development or other processes within the mining sequence that may have an adverse impact on First Nations and their territory.

- Consultation for early exploration shall be based on an improved process of notification and consent of First Nations. First Nations may consent to the claim, reject, or reserve the right to require a further, jointly-developed consultation process or preliminary consultation agreement before the claim can proceed.

- No permits shall be issued without written agreements from the First Nation.

Recognizing Consultation and Resource Laws

- The new Ontario Mining Act must recognize and enable First Nations Consultation and Resource laws related to mining, including requirements for permits, reporting, development agreements and minimum standards for consultation.

Impact Benefit Agreements

- Mining companies must negotiate Impact Benefit Agreements (IBA) as a means of accommodating First Nationsinterests. IBAs should be mandatory and include revenue sharing, jobs, training, procurement and various protocols as necessary.

- The Minister shall require Impact Benefit Agreements (IBA) as a condition for issuing permits for advanced exploration and development phases of the mining sequence.

Establish a First Nation's Decision-Making process at the highest level

- We recommend that the Treaty Commission of Ontario, consisting of regional-based Treaty Commissioners, be provided with authority under the new Ontario Mining Act to act in a decision-making capacity to review and approve permit applications, workplans, implementation of First Nation consultation and resource laws, adjudicate disputes, and provide advice on consultation and accommodation processes.

- Regional Treaty Commissioners may act to coordinate involvement in a permit entry system and all aspects of the mining sequence, ongoing consultation and accommodation of territory andrights and oversee as a First Nations' environmental commissioner to protect Mother Earth and enable First Nations' role as "stewards of the land."

- We also recommend that a First Nations' Environmental Commissioner be established within the Treaty Commission of Ontario, to play a role in overseeing the monitoring of environment aspects of Mining workplans , and mine closure plans.

- Both the Treaty Commission, and the First Nation Environmental Commissioner will have the authority, under due process, to recommend amendments, cancellation of permits and claims. In the event of a dispute or non-compliance both the Treaty Commission and/or the First Nation Environmental Commissioner will have the authority to make a binding decision.

- The Province in partnership with First Nations will define the roles and regulation of the Treaty Commission of Ontario and the First Nation Environmental Commissioner.

- As an interim process a tribunal or decision-making body should be created, designed and implemented by the First Nations and Province

Core Capacity

- Core capacity should be provided to First Nations in the form of funding, human resources and knowledge transfer to ensure meaningful and sustained participation in mining activity based on community needs. The funding shall be provided by the Ministry of Northern Development and Mines. The funding responsibility for core capacity should not be relegated to other government programs that are project driven and may not be sustainable. (i.e. New Relationship Find)

GIS, Mapping and Land Use Planning Initiative

- First Nations recommend that the Government of Ontario provide capacity support in the form of funding, human resources, and knowledge transfer to First Nations for the following:
- a Global Information System (GIS) program to store and manage map-based data;
- prepare and manage an inventory of First Nation lands and traditional territories for resource development;
- prepare and manage an inventory of withdrawal sites and culturally significant sites;
- prepare and manage an inventory of Indigenous Traditional Knowledge values and mapping;
- comprehensive community and regional land use planning;
- negotiating agreementssuch as MOUs, Interim Measure Agreement, Impact Benefit Agreement, Revenue Sharing, Resource Sharing.

Mandatory Training

- First Nations recommend that prospectors and others in the mining industry undertake a mandatory course in understanding and respecting First Nations communities, cultures, practices, beliefs and aboriginal and treaty rights as a condition of obtaining permits, licenses and leases. First Nations will play a lead role in developing and delivering the course and an accompanying resource guide.

Site Withdrawals of Water and Lakebeds

- Given that First Nations have never ceded their rights to bodies of water, First Nations recommend that lake beds and off-shore interests be added to site withdrawals.

Withdrawal of Culturally Significant Sites

- First Nations recommend that the new Ontario Mining Act continue to support the withdrawal of culturally significant sites, until such time that comprehensive land use plans are completed by First Nations.

Inclusion of Capacity Measures for First Nations

- First Nations require the time and capacity to take a comprehensive inventory of current land use and culturally-significant sites. Government should provide capacity to assist First Nations in identification of these sites.

Expansion of Culturally Significant Sites & Site Withdrawals within the Act

- The process as presently outlined in the Act and the pilot project presently being undertaken by the Ministry need to be expanded.

- A larger land area andbuffer zone is required under the new Ontario Mining Act. The withdrawal should be as large as is required to accommodate the site and should include a significant buffer zone to protect continued land use. An agreement and protection strategy would be required for development within 10 kilometers from a Cultural Significant Site.

- The definition of Culturally Significant Sites needs to be expanded to include all matters that may affect First Nations traditional activities and may include, but not limited to: cultural sites, gathering sites, sites containing artifacts, ceremonial sites, burial sites, trap lines, hunting, fishing, and places to gather medicine.

Intellectual Property

The information gathered for the purposes of ITK mapping and ascertaining an area's significance to First Nations would be the sole property of the individual First Nations that have gathered it.

Interim Process

Interim process be developed to deal with the withdrawal and uncertainty of mineral rights pertaining to site withdrawals and culturally significant sites.

First Nations Interests in Land

Additions to Reserve, potential land claim settlement areas, areas under dispute, and potential crown land that may be used for future community/First Nations expansion must be subject to a site withdrawal.

Inclusion of a Dispute Resolution Tribunal within the Act

- It is recommended that the inclusion of a dispute resolution tribunal within the Act shall include equal representation through appointments by the Minister and First Nations.

- When there is a lack of agreement on First Nations consultation and accommodation, significant concern identified by First Nation, or a workplan or permit application that is under dispute as a result of First Nation concern, the parties to the dispute be referred to a new independent Dispute Resolution Body and process established by the Minister and First Nations.

- The Dispute Resolution Process may use, when appropriate, First Nations dispute resolution methodologies, including mediation by Elders, and traditional circles.

Recognition and Harmonization Laws

- The Government must give priority to the discussion, recognition and harmonization of traditional law, including Consultation Laws and Resource Laws. These laws are applicable to activity and those undertaking activity on First Nations traditional territory. This harmonization is currently being discussed under the Ipperwash Priorities and Action Committee workplan.

Land Use Planning

- First Nations recommend that the Government of Ontario expand land use planning initiatives (southern Ontario and Far North) to the near north and central Ontario with a focus on supporting land use planning by First Nations on First Nations traditional territory.

- No advanced exploration or mine openings shall be approved without an approved land use plan completed by First Nations.

Mandatory Review of the Act and Regulations

- Government in partnership with First Nations will undertake the review and if necessary make amendments to the Mining Act and all its regulations every three years.

Implement a Moratorium

- The Government shall implement a moratorium prior to the new Mining Act coming into force. The purpose will be to ensure that unintended consequences such as mass staking do not occur that undermine the purposes of the new Act.

Session Notes

The following session notes outline the basic narrative of each of the sessions. Although not a word-for-word account they nonetheless provide the essence of the sessions and the opinion and direction provided to the Anishinabek leadership as they engage the Government of Ontario on the Modernization of the Mining Act.

DECEMBER 2, 2008 – Garden River First Nation

WAYNE LORD (WL) – Provides a general introduction to the process.

RON ROSS (RR) – Provides an agenda specific introduction.

The dialogue begins immediately with questions from a participant concerning ownership of the land and its resources. "When does the story start?" "When did the people give up their ownership?" "How did the ownership transfer from us to the province?"

The participant provides information on the 1850 Lake Huron Treaty, the Robinson Huron Treaty, and Confederation. A point shared is that Anishinabek, through the treaties, are 'co-owners' of the land and its resources, not just another junior partner.
WL asks if the participant would like the 'leadership' to take some time to adequately cover and explain the historical context of Treaties. Further, "do you want them to say (on your behalf), that no one ever gave up rights to minerals in any treaties."

DAVID LARONDE (DL) – Makes his presentation on the Mining Sequence.

A participant offers the opinion that prospectors should have to inform First Nations about their activities.
WL offers that certain areas should be "off limits" to mining prospecting and mining activity. This would require the pre-identification of specific territory by First Nations. He noted that this has begun more seriously in the last two years.
MNDM asks the gentleman if information regarding burial sites, sacred grounds etc. should be made public? There was a cautious response.

WL and the same gentleman engage in a discussion concerning embedding an alternate dispute resolution process in the Act. Anticipating a lot of work in this area, the suggestion is that this be done in a timely fashion.

General questions coming out of this segment were, "When does the duty to consult begin?" "When should it begin?" and "How can we ensure better inter-departmental co-ordination?"

DL makes a further presentation on the Mining Act. A discussion ensues regarding surface and sub-surface rights, and whether or not a provision stipulating major consultations should be written into the Act. The consensus was, yes, there should be such a provision.

DL offers his opinion that there should be provisions in the Act for capacity building in Aboriginal communities. These should also include provisions for education and training.

DEAN ASSINEWE (DA) – Conducts a presentation on the Sagamok Experience. Using the Chiefs of Ontario document on the consultative approach, Sagamok First Nation took the steps to draft a strategic plan including the identification of opportunities for involvement (jobs and influence) in mine operations. His First Nation conducts a traditional knowledge forum and noted that the Province respects the establishment of forums for Traditional Ecological Knowledge (TEK).

His final point is an assertion by the Sagamok First Nation that their rights will be infringed should the government not follow the recommendations in their paper.

SONIA PITAWANAKWAT (SP) conducts a brief encapsulation of case law addressing minimal consultation standards.

MNDM make a presentation on Modernizing the Mining Act, which stimulates a wide-ranging discussion on how finely tuned the consultation processes should be. It is the MNDM view that government positions in ensuing negotiations will be based on court decisions.

A younger participant expresses some concern that First Nations have severe lack-of-capacity issues regarding the resources required to meet multiple needs imposed by government.

RR introduces a variety of discussion topics, among them consultation and accommodation blended with capacity building, land use planning and revenue and benefit sharing.

It is agreed that the Act should facilitate shared decision making processes, although there is no definitive model suggested, leaving the question, "What should it look like?"

DA suggests that First Nations be notified at every step of the Mining Process for planning purposes, and that the Ministry and industry should inform and consult First Nations when any claimed lands are to be entered. Further, that issues related working groups be established, and that reasonable and feasible consultations and accommodations should take place at each stage of the mining process.

Some other generally accepted observations and recommendations coming out of the discussion were that:

- a proper legislative framework is preferable
- no development is a possible outcome
- the Act should include a section devoted to Principles
- land use planning and TEK processes should be completed as soon as possible
- a mechanism for co-management of resources should be established
- First Nations should have the capacity to fully engage with all parties on all aspects of development and the mining process
- Anishinabek are Partners not Stakeholders
- some sort of standing committee be established to address issues coming out of the Mining Act both now and in the future.

DECEMBER 3, 2008 – Sagamok Anishnawbek

WAYNE LORD (WL) – Provides a general introduction to the process, and acknowledges the grade six class in attendance.

RON ROSS (RR) – Provides process and agenda information, asking the audience to hold legal questions for legal counsel's presentation later in the day.

DAVID LARONDE (DL) – Makes the Mining Sequence presentation, and stimulates much discussion, when he poses the question,"What is the general lifespan of a mine?" The answer, twenty to fifty years leads to WL making the point that First Nations involvement from the beginning of the process makes it a generational thing.

A participant asked, "What role does the First Nation have in permitting?" and the response, "no role", leads into the presentation on the Mining Act. Some discussion of closure plans follows.

The following observations were expressed by leadership: that due to cost factors it's very hard to get third party reviews of these plans, and companies are resistant to paying. Also observed was that junior mining firms have tight budgets and cry poor. Expressed was that in the contemplated legislation there should be stipulated amounts to contribute to analyses of these documents. A 45-day response period is too restrictive and government or the companies might share costs of closure plan analysis.

WL makes the point that interdepartmental co-operation (MNDC/Environment and others), should be stressed in order to develop cohesive, cost effective implementation plans.

MNDM follows with their presentation on Modernizing the Mining Act – What We've Heard. It engenders the following discussion:

- "Are rock quarries governed by the Mining Act? – No."
- "Well, perhaps quarries and mines should be under one authority."
- "While some in private enterprise say the Mining Act might be too restrictive for pits and quarries, First Nations say there should be rigorous rules governing them, with no loopholes and stronger regulations."

This rigorous approach implies changes to other Acts, such as the Aggregate Resources Act (MNR), and an examination of best practices in other areas of jurisdiction.

DEAN ASSINEWE (DA) – makes his presentation on the Sagamok First Nation Experience, including their recommendations.

RR & WL – They lead off the facilitated discussions with the question, "What do you want from the mining industry in Ontario?"

A strong statement shared by leadership emphasized that "government and industry must begin by recognizing us as caretakers of the land". Adding that the government must respect our treaty rights, raising once again the question of how to get governments to agree to put in writing what we feel and know. There should be provisions made to improve economic development regimes and above all, any legislation should, in writing, show respect for Earth, Air and Water, the environment. The Sagamok strategy paper spells out these and other recommendations.

Discussion with the participants continued under the following headings:

ABORIGINAL and TREATY RIGHTS

Suggestions included:

- A new Mining Act must reflect the obligation to consult and accommodate.
- A new Act must be accompanied by a public education plan that includes private companies so that they can come to know us better. Cultural awareness on both sides must be promoted. A day seminar for prospectors would be helpful.
- Anishinabek communities must be linked to all phases of the mining process.

The open discussion continued with the question. How do you balance the secrecy/openness needs of the claims system? Another participant offered the opinion that, "If you implement the treaties properly, revenue sharing is a natural outgrowth"

PRESSING CAPACITY NEEDS

Suggestions included:

- Settle land claims and treaties to establish ownership.
- Don't co-opt our positions for short-term gains.
- Guarantee through the Mining Act unattachable own source revenues.
- Establish some kind of education/training component that gives opportunity to First Nations.

DISPUTE RESOLUTION DEVICE

There was general discussion around the question, "who would make up a body or board?" As a reminder to all, a participant used a humourous life example to stress the importance of educating the people of the reserve in these matters so they can make good, informed decisions. In her view, more meetings means better advice. Further, an Elder urged the group to, "make sure government-to-government authorities and responsibilities match up".

At this point, the subject of TEK work was discussed and it was thought this work must be adequately resourced, starting with accurate mapping of all activities and no-go zones to facilitate proper land use planning.

REVENUES AND REVENUE STREAMS

Commentary took in the range of what might be included in revenue sharing, the general sentiment being that all things were on the table, including a percentage of subsidiary business contracts, and a share of provincial revenues. Most agreements should be of a long-term duration, and whatever business arrangements form the list, the major items should be concluded before major operations begin.

DECEMBER 4 - M'Chigeeng First Nation

The session begins with welcoming remarks and an opening prayer. Leadership of a neighboring community begins talk with an explanation of the Mica Bay Treaty of 1850, and the One Man Island Treaty of 1862, which both still apply. Tying this continued application to today, it clear that one disappointment is that First Nations are still squabbling over land amongst each other, a fact that was expressed as unfortunate. A second major disappointment is that, government feels that First Nations have no rights to anything. It was acknowledged by the local leadership that the UOI talking points are a good explanation for why we are here. Referenced was the Matrimonial Real Property process, and how the Anishinabek position came out of that, and his hopes that this process will yield similar results. It was asked by leadership to consider the aura of spirituality enveloping these deliberations, posing to all the question, "Who are you to control the Earth?," suggesting to answer this question all must seek guidance from the rock spirit. "Question and seek guidance." "There is always a spiritual element. It is our right to contaminate the Earth?" "Seek spiritual guidance friends."

WAYNE LORD (WL) – Provides a contextual introduction stressing how important it is that the posture of upcoming negotiations be one reflecting a government-to-government relationship which acknowledges the people's right to influence the unfolding process.

RON ROSS (RR) - Makes a topical introduction.

DAVID LARONDE (DL) – Gives his presentation on the mining cycle, which engenders some questions. A point was raised that there are only seven or eight big mining companies, wondering what separates a junior from a senior? The answer is money in the bank and the ability to raise capital. "Where are the Anishinabek in the cycle?" Essentially nowhere. Perhaps our involvement should occur from the beginning of the process. Our consent must come somehow at every stage."

It was remarked by leadership that that First Nations are fighting each other over Treaty entitlements and as a consequence are missing many other opportunities. It was added that First Nations are left arguing over mining and ignoring the opportunities, like jobs, provided by highway construction. There is a short discussion on the obligations of foreign owned mining companies.

DEAN ASSINEWE (DA) – Runs through his Sagamok Experience presentation. A discussion on the difficulties and challenges in getting established follows. Also discussed are the overlapping issues and the impacts on a First Nation by decisions made by other First Nations. There is general acceptance of the need for First Nations to work together for the collective good.

MNMD – Makes a short presentation on What We've Heard

A participant, who works in the Land Use Office at Whitefish River, submits their paper, Key Issues and Changes to the Mining Act. This paper is submitted as an official communication from the Chief and Council of Whitefish River First Nation.

SONIA PITAWANAKWAT (SP) conducts the legal presentation of the ramifications of the recent three cases resulting in an enhanced obligation of the Crown to consult and accommodate. The Crown has a duty to provide notice, engage directly, listen with intent, and accommodate/negotiate fairly. There is some question as to who must be included in the consultations.

WL&RR lead a discussion on the duty to consult, which must start at the very beginning of the process. A Participant re-iterates "our obligations as custodians of the land" and wonders if this notion could dovetail into 'withdrawal' arguments? It implies a specific application, but it would be a reach to think a whole Treaty area would be exempted for spiritual reasons. There has to be give and take here as the above argument could conceivably be extended to include the whole province. Some advocate for "permission to explore", with no timelines. "If new rules chime in, will there be interim measures to counteract a flood of new claims trying to beat the deadline?"

Two participants suggest a two check-off system to approve staking a claim:(1) Submit mapped area of potential claim to government agency;(2) Go to First Nation for approval. When these two checks are done, you can stake a claim.

Under the heading Resource Sharing, participants are asked, " When is the duty to consult done?" Most agree at the signing of final agreements on benefits and royalties. The suggestion that a template impact benefit agreement be appended to the legislation causes some to want to look at agreements signed in Alberta and elsewhere. The motto is "Adapt, adopt and improve best practices".

Land use planning is the next major subject heading. The sentiment of the group is that First Nations should be able to withdraw land according to broader guidelines. This implies a listing of current exclusions. A quick explanation of Patent Areas (protected forever) and Lease Areas (protected for 21 years) follows, both of which should be released now unless actively and currently being worked. All think a priority work item should be to effect current land use plans.

Under the heading Capacity Building, participants felt that the first priority should be the capacity to engage. They feel Tribal Councils should play a greater role in macro development, however, not to the extent that individual First Nations concerns are ignored. Communities must be allowed their input.

With regard to dispute resolution processes, the group felt they should be mentioned somewhere in the Act, as should be Management Boards, Standing Committees etc.

A participant concludes with a quote from former National Chief Ovide Mercredi in which he asks, "How long do we have to keep waiting for government to respect our Treaties?"

DECEMBER 5, 2008 – Whitefish Lake First Nation

WAYNE LORD (WL) – Provides a contextual introduction including UOI position paper on consultations and the role of the Team. "We will now say, I was there."

DEPUTY GRAND CHIEF HARE – Gives opening prayer, then offers that this government initiative is a direct result of Sam George's work. The effect of Ipperwash is tangible and present in the room. He continues with the key messages from UOI, mentioning the consultative work the Union has done on MRP and Citizenship. He explains that the input of citizens is a vital part of the process. In his opinion, the government doesn't know how to consult with First Nations and that January 15 is an inadequate deadline, but if we want to be part of the drafting, we have to consult as best we can. He shared how he met with Ministers Gravelle and Duguid, and how he told them of the Anishinabek desire to be part of the process.

The Deputy Grand Chief told the group how the Ministers asked for confidentiality coming out of their meeting, and how they were told that it was the Chiefs intention to fully inform their citizens. The media were however, a different story. Finally, the DGC related how he and his colleagues had advised Ministers and their people to write down their decisions, "because we sure will."

RON ROSS (RR) – performs a topical introduction.

DAVID LARONDE (DL) – Makes his presentation on the Mining Sequence. There is a question about people seeking help and advice from Ministry officials, to which the response is, "yes of course, we have an extensive library and resources to help you."

A participant offers that there is so much land area covered by Patents (Sudbury, Kirkland Lake, Elliott Lake), he thinks it would be difficult for First Nations to do something new. WL responds by saying Anishinabek should be prepared to dispute Patent claims or at the least have the right of first refusal.

The DGC says 'the free entry' system is a major problem, and cites other PTO's who may have objections to it. A participant advocates for revocation of Patents, especially if there was no consultation with First Nations prior to their being established. During discussion, the idea of pre-identification of lapsing Patents and right of first refusal is advanced.

Another Participant suggests that some sort of cultural awareness training for prospectors be written into the Act. The DGC raises questions of jurisdiction as, "the inevitable outcome of the political vs. the technical". Another participant agrees that the right of first refusal should apply to all areas of the mining sequence while another believes that "consultation should begin at the beginning" of the sequence. A participant states his belief there should be consultation and a closure plan for aggregate pits and quarries.

Dean Assinewe (DA) – gives his presentation of the Sagamok experience, lending weight to the interconnectivity of action.

SONIA PITAWANAKWAT (SA) –makes a brief presentation of three court cases and their findings.

Due to the make-up of the group (including four Chiefs), discussion and concurrence with the positions of the UOI was accepted. The afternoon session was accelerated.

Many suggestions were outlined:

- There must be a spiritual aspect to the Act.
- It is unacceptable for medicine plants to be wiped out by unplanned activity. There must be a healthy respect for the environment.
- There must be 2-stage staking and at least one day of cultural training/education for prospectors, and more for companies.
- A sequence acceptable to the attendees was written down.
- There should be a companion resource development policy developed.
- The deadline for responding to closure plans should be extended to at least 120 days.
- Consultation is more than just talking, it must lead to consent.
- We want to take into account impacts on the whole Treaty area when discussing individual impacts.
- Mining 101 (DL's presentation) should be on a video for all First Nations.
- The role of the PTO should focus on capacity and education - a fostering role, strategic in its approach.
- Under the heading Co-management and Dispute Resolution, if you follow established principles, you won't have to refer constantly to the Constitution or the Treaties.
- Effective co-management is evidenced as a function of equitable sharing of revenues.
- Some kind of new intra-governmental tax regime could fund this.
- Dispute resolution boards are a feasible possibility and we should examine current best practices.
- The problem with land use planning is extracting adequate resources to do the plan. Not only should we have localized land use plans, but regionalized plans as well. Withdrawal areas should be mapped regionally as well.
- To adequately participate in Resource Benefits and Revenue Sharing, First Nations must participate in the process as shareholders.
- Perhaps the PTO can develop a template for this purpose. Some agreements are just for jobs, compensation etc; these are not resource SHARING agreements.
- We must examine who the Treaty beneficiaries would be. We should assume at least 2 Treaty Watersheds would be affected by new agreements.

Final advice to the Grand Chief was offered; "Don't forget the Treaty Rights!"; "Don't undersell us!"; and "Plan ahead for the next seven generations."

DECEMBER 8, 2008 – Curve Lake First Nation

DEPUTY GRAND CHIEF HARE – Opens the session with a prayer, and provides background in his language. He says even if there are only a few people in attendance, word of the proceedings will get out. He promises, "we'll be back to keep you informed. He uses examples of other First Nations resistance to lot sales as an example of a community working together to influence development.

RON ROSS (RR) AND Wayne Lord (WL) – Conduct a joint introduction. They discuss matters in the context of the application of worldwide efforts by indigenous peoples to achieve recognition of rights. There is optimism and hope in this process. WL seeks participants' opinions on the hopes of youth and mothers.

DAVID LARONDE (DL) – makes his Mining Sequence presentation, leaving one participant to wonder why don't communities stake and make claim their own territory. It seems some are, but very few.

DEAN ASSINEWE (DA) – gives his Sagamok Experience presentation.

WL – "Do you want to settle your Treaty before moving forward? You have pending claims that would be affected by outside development. DA – While claims are not his area, hydro line construction is an example of a situation where one might accept land or money in compensation. WL – Have the 12 determinants of community health and sustainability been developed by your people? DA – Yes, and we prioritize them as well.

WL enters into an explanation of the Arctic Council's Determinates of Well-Being Index, and advises that decisions must be made according to your own principles. In its application to mining, different First Nations will follow different paths. He introduces the notion of an overall protocol on consultations. He cites two World Bank policies for indigenous peoples, one on criteria for investment, and one on consultations, as examples of constructive engagement.

DGC Hare speaks first on external politics and its influence on Anishinabek processes. The European view is of economics and industry, ours is not, but we have to respect each other's view to progress in a good way. There must be active resource sharing, not just in the mining industry. However, he doesn't want a claw back from government, he refers to the Rama example as good, a subsidy arrangement not so good. Chief Hare is in support of whatever method it takes to achieve this new kind of partnership a reality. Local leadership responds and outlines the negative effect on First Nations of the federal Indian Act.

DGC Hare enters into a talk of how aggregate mining is eroding communities and relates a discussion with Ministers in which other PTO's proposed 250 changes to the Act. He stressed one of the Union's goals is to have "no big word" explanations of terms so an average person can understand them.

WL proposes that changes to the Act should be accompanied by an implementation plan, including scheduled reviews at five-year intervals.

Local leadership remarks for the Grand Chief, "remember your purposes and that you have the respect and support of your people." "I would caution you against believing 'forked tongues', and make sure the translation of your words is accurate." "Make sure the legal i's are dotted properly, and as a caution, make sure our legal reviews are in before signing anything." Finally, "bring back your agreements to the people for final approval."

SONIA PITAWANAKWAT (SP) – makes a presentation on the Crown's duty to consult. DGC Hare adds, "remember, we have the option to challenge decisions in the courts, but we prefer to negotiate."

MNMD – What We Heard presentation.

A participant hopes that in the Act there's a formal recognition of Aboriginal involvement in mining. He cites concessions made in their 1923 Treaty which 'rules us out' mining activity. He would like to see concrete resource sharing agreements (wishing they could be retroactive), respecting employment opportunities and resource benefit sharing. As a general note, he says the public has a skewed perception of where First Nations get their money. Our money is not tax money handouts. A participant, regarding

the process says, "most of the time it's too late for comments to even register, so the involvement in the mining business should kick in at the beginning. Once again, there's just not enough time to get people involved." "First Nations should be represented on all boards and tribunals, especially dispute resolution groups."

DGC Hare asks, "Information should not congest at the Band office as the flow of information is vital to all processes." There is a suggestion that UOI convene more sessions and provide best information.

DECEMBER 12, 2008 – Mnjikaning First Nation

DEPUTY GRAND CHIEF HARE – Gives thanks and leads off introductions around the table.

A Participant said she had spoken to some members of her community (not Rama), who said the Mining Act, "was not in their life." Their major concern is over gravel pits and aggregate extraction, not covered by the Mining Act. They feel there have to be far stricter regulations in this area because of the obvious dangers.

DGC Hare relates the confidentiality requests of Ministers, and his personal position that information gleaned in these 'confidential' sessions should be shared with the people. The importance of these sessions is that if even one person attends, they will help get the word out, and that more will follow future sessions.

RON ROSS (RR) provides a program specific introduction. WAYNE LORD (WL) sets the context for the process. He mentions that one major purpose of this exercise is to develop the team and approach for the negotiations and consultations to come.

A participant wants to discuss a situation in his home area. They own the islands from Rooster Point to Penetanguishine, and citizens have noticed large amounts of silica, clearly extracted from one or more of the islands, piled up and ready for transportation. He asks the MNMD representatives how they might investigate this, discover the source of the silica, who is doing this and how much money are they making? Officials say they will attempt to find out.

DGC Hare wants to stress the importance of plant life and natural medicines which should not be disturbed by mining operations, including pits and quarries which have been mentioned today. The same participant says in the past there were some islands that were purportedly sold on behalf of the First Nation, but no one has seen any of the proceeds. Further complicating the issue are competing claims generated by them and at least one other First Nation, which have not been followed upon and adequately monitored by the Provincial government. In short, this case is about massive piles of silica, extracted from unknown islands, being transported to an unknown destination by persons unknown.

His community government has been engaged in an identification project since 1974, when they accepted an INAC dictum on 'island ownership'. In today's context, they think there may be a lucrative future in wind turbines, essentially linking the islands together to produce electricity by harnessing the wind. It seems that his difficulties are with INAC, but certainly the province could play a more helpful role.

DAVID LARONDE (DL) – gives his Mining Sequence presentation, this time adding a video on the development of the Raglan project in Northern Quebec. DGC Hare comments that Grand Chief Beaucage says that communities need to know when prospectors are coming onto their land. Free Entry must be challenged!

SONIA PITAWANAKWAT (SP) conducts her legal presentation.

WL wonders if the government can delegate the duty to consult (responsibility) to the Union? He asks what happens if a First Nation doesn't respond to a closure plan? Apparently, the proponent is deemed to have met its obligation.

Dean Assinewe asserts that if you don't change the Free Entry system, you can't change the rest of the process. WL adds that he is coming to understand how important water rights are to the discussion. A participant introduces the notion of 'fee simple' land ownership, under which First Nations should own both the surface and sub-surface rights to their land. WL mentions that Free Entry is a Eurocentric notion, which must be changed to reflect principles that respect First Nations rights.

RR continues the discussion of Rights and Treaty rights, asking," Where does the duty to consult begin?" "Clearly at the beginning of the process." A short discussion of what constitutes capacity follows, highlighting money for analysis, and unattached revenue sharing. It is noted that local land use codes and their applications are similar to land use studies for economic development.

What would dispute resolution bodies look like in this Nation-to-Nation relationship? Perhaps one should be identified in the Act. The DGC advises to remove politics to resolve decisions and disputes. As regards land use planning, a participant suggests it's important to fully flesh out plans. Her reserve has owned lands, and sacred grounds clearly identified in their land use plans.

DA feels that as a result of proper consultations, government should be able to identify high potential areas of interest to mining companies, and talk with communities about possible impacts. A participant notes that once again the notion of 'precautionary principles' comes up, and this should be clear to the crafters of the new Act. "Benefits should go to the back yard," and cites Red Lake as an example of, "the moral issue of sharing." Communities should have an increased legal capacity to deal with all the contentious issues, perhaps through greater assistance from the PTO. He feels we might investigate the American 'Integrity Body' or similar NWT examples of dispute resolution bodies. He also mentions a government body begun in the Harris administration to annex 'unorganized land' for other uses and believes municipalities seek to be the prime beneficiaries of this move, to the detriment of First Nations. He cites the situation in Pic River as an example.

An accepted sentiment is that secrecy for the locations of medicine plants must be respected in the mapping/land use effort. It is agreed the duty to consult is fulfilled once all deals are signed.

There is consensus that environmental protection is a fundamental principle of any agreement, and the Act itself, including remedies and oversight controls after a mine is closed. There should be a stipulated emergency fund, funded by a small percentage of the royalties. As well, multi -jurisdiction problems must be smoothly resolved. A Participant suggests a land use tax, perhaps administered by a UOI administered authority. UOI might levy, collect, regulate and distribute monies. These revenues could come from more areas than just mining.

DEAN ASSINEWE makes his Sagamok Experience presentation.

MNMD makes their presentation, "What We've Heard".

DECEMBER 15, 2008 – Aamjiwnaang First Nation

ELDER DOUG HENRY, opens meeting with prayer of welcome and thanks.

Local leadership, shares UOI perspective on this consultation and adds that this work will lead to new resource sharing arrangements.

RON ROSS (RR) explains the meeting process. WAYNE LORD (WL) provides a contextual introduction, explaining this process could be seen as one of the first practical applications of a government-to-government relationship.

DAVID LARONDE (DL) begins his presentation on the Mining Sequence. He is asked, "How did the Crown come to own the resources?" "Can the expanded, amalgamated municipalities claim the sub-surface rights within their new boundaries?" The considered response is they will try so there is general apprehension expressed over what is seen as a highhanded takeover. "How does this impact resource sharing?" It can be seen as an infringement on the rights accrued on traditional territory. In fact, you don't even have to be a Canadian citizen to be a prospector and stake claims!

A local Elder comments: Anishinabek have reserved mineral rights on some lands, but not many. It was expressed that there is concern for nuclear waste being buried in the Shield and links this to a discussion of brine wells that will take place later in the day. There is a short discussion of the overlap between departments and the imperative for them to act better, jointly. It was suggested that the enforcement arms of departments be de-coupled from their promotional arms.

A local Elder asks questions what the case law says regarding the laws of general application and what are the impacts of provincial legislation on federal lands? To general agreement, it was declared by a local leader, "We have a Treaty problem here – we are The Black Hole of Treaty implementation!"

DAVID LARONDE (DL) conducts his Mining Process presentation, and afterward there is a short discussion of the Aboriginal Procurement Policy. DEAN ASINEWE (DA) runs through the Sagamok Experience. It engenders a discussion around the plusses of integrated activity, and the functional importance of interconnectivity and data gathering. WL re-iterates the value of Traditional Knowledge as intellectual property.

SONIA PITAWANAKWAT (SP) walks through her legal presentation and there is a brief discussion of an intrusive windmill farm at Kettle and Stoney Point. WL points out consultations can be used as a tool and can differ from circumstance to circumstance. MNDM makes their, "What We've Heard" presentation.

An Elder begins a truncated afternoon session with an explanation of solution mining as it applies to brine wells, which produce other chemicals under the existing Oil, Gas and Salt Resources Act. Section 75 of the Mining Act permits salt resources extraction, a process where water is pumped down at pressure into a shaft and the resulting dislodged material produces useable product. One of the little know facts about the gigantic salt mines under the floor of Lake Huron is that the caverns left after the salt is mined are being used by companies to store vast amounts of natural gas (from Ontario, Alberta and elsewhere). This is a resource application producing revenues not shared with First Nations. First Nations never ceded shelf rights, or lake bed rights in any Treaty, and so this has become a sticking point for leadership. Besides provincial authorities, this involves the National Energy Board, contributing to a very hard to deal with intersection of authorities.

There is agreement that consultations should be mandatory from the beginning of any process. It is believes by one Elder that First Nations should have their own regulations for activities on their lands. Traditional land use needs Native approvals.

Under the heading of Capacity, it is felt by one Elder that it is important to build on internal organization for Aboriginal business to share information on construction and other business opportunities. Regarding co-management, joint decision making processes are preferable, also for dispute resolution. There are models employed elsewhere and they should be studied.

Land Use Planning should be reflected in the Act. Once a land use plan has been developed it should positively affect development. Participants liked the idea of withdrawing territory and thought First Nations should own the information of what's in these withdrawn sites.

On resource benefit sharing, some First Nations are leery about public disclosure of revenues because they are afraid INAC will claw back money as a result of increased own source revenue. Participants felt improved infrastructure in and around mines should extend to adjacent communities, just like condo developers must improve municipal infrastructures.

The PTO could perform an intermediary's function, making arrangements with individual First Nations who hold the authority. General goals and purposes of the effort should be to re-enforce the stewardship of the land and best efforts should be given to writing down the proper spirit and intent. As in every session, a great desire is for Treaties and Land Claims to be resolved. It will be hard to have an effective Mining Act if land issues are not resolved.

JANUARY 6, 2009 – Fort William First Nation

Chief Hare delivers the opening prayer. In his subsequent address, he expresses disappointment that more people are not in attendance. He gives his undertaking to bring up better co-ordination with his colleagues at UOI. He truly wishes the community would invite the team back at some point further in the process.

He goes on to explain, "what we are talking about goes far beyond the Mining Act," into areas like aggregate extraction, "it's almost like there are no rules in place, and what we are left with is a football field and a big hole." He fears we are losing medicine men and the benefits of their teachings. Forestry and mining have the potential to eradicate medicine plants, and this is unfortunate, as his own experience with natural medicines shows.

Regarding the Mining Act, we need to ensure there are provisions to review the Act every five years. He acknowledges the students from the university, and stresses their importance, that their eyes and ears are open. Chief Hare concludes by stressing that January 15th is merely a date, not a deadline, and encourages participants to communicate with the team.

RON ROSS (RR) gives an agenda based topical introduction. WAYNE LORD (WL) provides the historical context. He explains the assertion of Aboriginal Rights should promote co-operation, not confrontation. To aid in the process, we need to know your issues, "what elements should we add to the mix?"

DAVID LARONDE (DL) delivers his Mining Sequence presentation, beginning with 'free entry', which he feels is the fundamental aspect of mining. He mentions $500 - $700 million expended yearly in Ontario for exploration. He is asked, "what's in a feasibility study?" and we discover it is comprised of all components, from building to mining to time frames, to commodity prices to travel to environmental and labour costs and beyond. The question is asked, "Where does the money come from for Environmental studies?" The answer is that the majority comes from industry sources, however, there is a government buy-in as well. Chief Hare notes there is a new openness between the three levels of government and it is his view that KI and Ipperwash are behind this new relationship. WL notes "the stick in the spokes" approach has produced results, but has a big downside, now there is a carrot and stick view, which has led to the notion of sharing and our job is to put this into practice.

There is discussion around the fact that currently, consultation solely occurs around the closure plan. WL says we have to get to the point where the modernization of legislation grounds the obligation of the Crown, moving what government does from policy to obligation through legislation. Further, land and treaty recognition can't act too far away from the mining sequence/cycle or else the mining companies might decide to put their money elsewhere.

Dean Assinewe briefly tells how Sagamok dealt with a closure plan, and then begins his Sagamok Experience presentation. He says his First Nation has signed two MOU's and that they struggled to find a balance between their traditional values and their current expectations, and they found industry somewhat receptive to notions of traditional values. At Sagamok, they consulted their elders and tried to convince companies it's cheaper for them to do the right thing. "It's all about defining your frames of reference, individually and collectively."

A citizen, offers there can be an impasse in understanding during negotiations. He says we are not opposed to development, but First Nations value their way of life more than the money they might make from development. Currently, we are in our third go around in resource development, there was Hydro, then Forestry, and now Mining. The lesson learned – if you can't guarantee you'll return the sites to the way they were before 'development', then you shouldn't be there in the first place. An open discussion concluded that there is the need for direct, meaningful dialogue between governments around treaty rights and traditional ways of life. Government's attitude has got to change from the winner vs. loser psychology.

There is a general recommendation that there be a First Nation's monitoring and certification program. It would involve a checklist of mandatory requirements for industry and government, referencing pertinent issues that must be addressed. The point is made that we have to be clearer in describing Natural Laws in a way that will influence Treaties and other agreements. The follows a lengthy explanation of the Robinson/Superior Treaty, originally conceived as a means to smooth access for mining companies in the near North.

MNDM makes their What We've Heard presentation. A Participant asks what are the alternatives to the Free Entry system. One answer is the combination of map staking and physical staking (dual approval).

A participant asks what happens after this part of the engagement process is over? The response is that the Crown, depending on the stage of legislative development, will exercise additional consultations. There were concerns expressed over the length and depth of ensuing consultations, and whether or not there will be opportunities for individual First Nations to participate further.

SONIA PITAWANAKWAT (SP) provides a legal background on the duty to consult and accommodate.

A citizen asks if the Ontario government has guidelines for consultation? The response from MNDM points to the draft guide on their website. The representative is hopeful a firmer guide will follow, however, since First Nation's are defining their own sense of how consultations should be conducted, perhaps the government will only offer more general guides.

The facilitated discussions follow, beginning with the observation that the wording of the Act should reflect First Nation values. Citizen offers that the duty to consult begins at the earliest planning stages of resource development, possibly years in advance of any real physical work. Obviously the government doesn't just decide overnight on resource development. WL's observation that consultation should occur at each phase of development leads to a discussion on whose duty the duty is. It is suggested there should be a dispute resolution mechanism built into the Act. Some sort of body to preclude going to court to solve myriad disputes.

There was general agreement on the utility of land use planning. There is also a point to be made for using a land use plan as a promotional tool for First Nations. The theory is that if you know what you have and what you want, you can go out and promote investment. The opinion that industry controls land use planning, not the Crown or First Nations, and that land use planning is fine, depending on who controls it. There was an affirmation of PTO involvement in the macro areas of this process.

The parties agreed that the purpose of the Mining Act should include, "values and rights of Aboriginal peoples shall be taken into consideration." The Mining Act doesn't stand-alone, there should be respectful mining practices and resource development activity. We should be the subject of the law, not the object of the law. New language must be found to describe the purposes of the Act. It doesn't or won't stand alone. Development should do no long-term harm.

JANUARY 7, 2009 – Red Rock Indian Band

Local Elder gives the opening prayer. Chief Pierre makes welcoming remarks. Minister Gravelle thanks previous speakers, and speaks of the primary objectives his government has in this exercise. The first is to develop a strong Mining Act, which is respectful of the environment, respects people, and provides the conditions for prosperity. "Our intention is to build a stronger, more durable relationship with the people."

He says that if we trust each other we can achieve clarity for industry and the people. He apologizes for the tight time frames, but assures those in attendance that there will be extra time to assess the positions as they develop, because the government, "wants to take the time to get it right."

The Minister mentions that the mining industry generates $10 billion and 100,000 jobs annually for the economy of Ontario, and he believes it is the largest private sector Aboriginal employer. He observes that while we are enduring an economic downturn, mineral exploration doesn't stop, and that it is important to find the right balance of influence regarding the industry. "We want you to help us find solutions." He concludes his address by expressing his and his government's sincere desire to make substantial progress in this area.

Chief Hare responds by thanking the Minister, and saying, "Our people are looking for success." He praises the people of Pic River for their recent successes in forging economic partnerships, and adds we have to protect the resources of our people.

Minister Gravelle recognizes this process is about much more than just mining, will have applications in other jurisdictions and that all Ministers have been tasked to work hard to achieve progress at this and other tables.

Wayne Lord observes that this process and these meetings should be viewed as history in the making. As a final comment, Chief Hare presses his point that the Act should be open to review at five-year intervals.

Ron Ross provides an agenda specific, topical introduction. Wayne Lord provides a contextual introduction. Open discussion took place of the Chief's role in the establishment of Anishinabek laws. About the process in general, WL suggests it could be the beginning of a 'horizontal engagement' era.

David Laronde makes his Mining Sequence presentation. A short discussion on surface vs. sub surface rights involves the description of the former being one plow depth or one hand scoop deep. The free entry and its permission to trespass surprise many. The discussion then centers on the employment opportunities offered by the various stages of the cycle and there is consensus that there should be First Nations involvement from the beginning of the cycle.

The next item of discussion is of rehabilitative measures, with agreement that more emphasis should be placed on defined responsibilities. An extensive discussion follows on the varying opportunities arising in the whole mining process, especially if First Nations take control of their own futures.

Sonia Pitawanakwat makes her legal background presentation. WL asks if there's a way for First Nations to operationalize the duty to consult? Sonia's response is that it's possible, especially if both parties agree to respect each-other's processes, adding, "the goal of all parties should be to obviate the need for litigation."

Dean Assinewe makes his Sagamok Experience presentation. Regarding their 12 Determinants for Success WL asks participants if these standards apply to their communities and if they think they should set their own standards? An affirmative reply is given, "if they help define our own needs and wants."

MNDM makes their What We've Heard presentation. WL and RR conduct the facilitated discussion, giving rise to the following observations:

- the people want jobs and training from the mining industry
- to be successful partners, they must be consulted from the beginning of the process
- there must be no infringement on their rights
- our consultation methods and plans should be written down
- federal, provincial, and Anishinabek governments have a duty to consult
- we should be talking about water rights and watersheds defining traditional territories

There is discussion about the value of spending time coming to a common understanding of what the 'duty to consult' really means, with agreement that maybe it's best to agree on how to consult generally with the specific working themselves out. One thought is of whom the companies actually consult with.

There is agreement that each community should be free to develop their own operational rules regarding consultations, but a general template would be helpful. Consultation should occur at all phases, and this will lead to informed consent. There was also agreement on two-stage staking. It was acknowledged there is a great need for money to hire people to do this specific kind of work, and that perhaps the Tribal Council can assist in this area.

Participants agreed on-going structures should be established to handle co-management and dispute resolution. There was discussion of the downside of multi-party revenue sharing agreements, with the opinion it is not necessary to write RBA's and benefit sharing agreements into the Act. Additionally, there was no consensus on PTO involvement in these or other processes. The general thought was IBA's should not be legislated, but rather tailored to each individual situation so they won't be hung up if the Act is delayed.

Final advice was "Don't forget who we are" and "Protect the Earth".

JANUARY 8, 2009 – Pic River First Nation

Elder gives the opening prayer. Deputy Grand Chief Hare makes an introduction in the home language. He relates that he ex-

plained to Minister Gravelle and others the added need for federal involvement in processes to come. He discusses aggregate extraction, and how new municipal rules have driven non-natives to reserve (and adjacent) lands for product. Not only do they not pay for what they take, they leave the holes and nothing else. He believes we need our own laws to protect ourselves. There is a brief discussion of dates and deadlines, and Chief Hare assures participants their ideas can still be input during the next stages in this process. Local leadership highlights that the Mining Act is not the only legislation that needs to be changed, and thanks citizens for attending this 'first of many' session.

Reference is made to the 1924 Lands Act, which begins a discussion of tax revenues from new local mining ventures, how is it that the local municipality can receive money and the Reserve can't? Chief Hare adds in facts concerning lot sales.

Ron Ross (RR) gives an agenda based, topical introduction. A participant speaks of Pic River's recently passed law and policy on consultations, and provides attendees with copies. "How do we operationalize our consultation law and plan?" This engenders a general discussion on the implementation of this law, and assurances are given that their ideas will be advanced.

A participant wants to know when and how it was that UOI took over the current process? One participant voices is concern that the UOI is stepping on toes. Further, the UOI approach is not what they want or need. The Energy Alliance is noted and how the UOI 'scooped' their process. Chief Hare hopes they'll see a shift to more grass roots influence, with this process as an example. Wayne Lord (WL) asks for patience in the process of becoming governments.

A participant takes the position that government will say, "Pic River has been consulted, because we've talked to UOI." The advice chain should be bottom up, not top down.

WL responds that just because they say that doesn't make it so. He believes government has to come to you to get what they want and this means they have to accommodate you.

After a break Ron Ross makes a presentation of the Mining Sequence. There is a brief discussion that Ontario has responsibilities regarding claims and treaties. A participant speaks of the importance of knowing how the mining sequence works in order to benefit properly. He feels First Nations have to compromise a bit on matter of discretion in order to gain overall.

Local leadership supports First Nations being consulted from the beginning of the process, and an observation is made that one doesn't even have to be Canadian to stake a claim. It was also noted that it's not just First Nations people that want changes to the process and the Act. There follows a lively discussion on land use planning – how it can block unwanted actions and promote desired actions. This leads to a discussion of capacity requirements at each stage of development. The point is made that as Anishinabek people, and Canadians, we deserve better. Our laws should be recognized in the Act.

SONIA PITAWANAKWAT (SP) gives a legal presentation.

DEAN ASSINEWE (DA) gives his Sagamok presentation. He begins by drawing parallels between Pic River and Sagamok, saying he has recognized great similarities in approach. A wide-ranging discussion of internal and municipal relations ensues, noting that it is important to avoid being talked to last. To act like governments, we have to have the capacity to enhance our technical support; the advantage to an economic downturn is that it offers a break to train people; Interim Measures Agreements will bridge the gap until treaties and claims are concluded, and that First Nations need a share of government revenues.

MNDM makes their What We've Heard presentation, and WL opines that there seems to be convergence of opinion between MNDM and UOI on many recommendations.

The facilitated discussion was wide ranging, with a number of points made:

- It was agreed there must be recognition of First Nations as a Third Order of government
- There was discussion that territory must be occupied or used to prove validity of oversight, citing both local and national examples
- The duty to consult means you have to listen, not just preach, that the style of consultation should be up to the First Nation(s) involved

It is stated that industry is driving the work on the Mining Act because it's in their best interest and it is felt that government doesn't care about the Anishinabek people and is complicit with industry in stealing from the Anishinabek people. Other participants echo their lack of trust of the two.

The group would like the Minister to come to their community and explain the draft Act. Every year, First Nations and Ministers should meet to assess progress. Some notion of revenue sharing should be in the Act. It is agreed resource sharing methods should be in the Act.

Some participants strongly feel there hasn't been time to respond adequately to the questions being put to them in this session. They believe they need more education on these real issues. They need serious money to address capacity issues. If the UOI representatives at the table do not make demonstrable progress, we should disengage from the process.

And finally, there was strong talk of a ratification vote amongst Anishinabek on the proposed Act.

Appendices

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To obtain copies of any of the documents in the Appendices please contact:

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